99TH CONGRESS
2d Session

SENATE

REPORT
99-511

ON THE IMPEACHMENT OF HARRY E. CLAIBORNE

OCTOBER 1 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

Mr. MATHIAS, from the Senate Impeachment Trial Committee, submitted the following

REPORT

[Pursuant to the provisions of Senate Resolution 481, August 14, 1986, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials]

COMMITTEE REPORT

Pursuant to Senate Resolution 481 of the 99th Congress, agreed to on August 14, 1986, this Committee has received evidence and has taken testimony relating to the Articles of Impeachment which the House of Representatives has exhibited against United States District Judge Harry E. Claiborne. Now, in accordance with Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, we "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee. . . ." Senate Impeachment Rule XI does not authorize the Committee to make recommendations to the Senate, and our report contains none. The full text of Rule XI is reprinted as an addendum to this report.

The proceedings before the Committee are printed in Senate Hearing Report 99-812, which is comprised of four parts and an addendum. The Committee hereby certifies the hearing report to be a copy of the transcript of the proceedings and testimony had and given before it.

Part 1 of the hearing report is a transcript of (1) the Committee's organizational meeting of August 15, 1986; (2) the Committee's meetings of September 10 and 15, 1986, at which the Committee heard argument on pretrial motions; and (3) the continuation of the Committee's meeting of September 15, and the Committee's meetings of September 16, 17, 18, 19, 22, and 23, 1986, at which the Committee heard testimony. A certified transcript of Judge Claiborne's second trial in the United States District Court for the Dis-

91-010 O

S963-1

rict of Nevada is printed in Part 2 of the hearing report, and at pages 997-1588 of Part 3 of the hearing report. This is the trial which resulted in Judge Claiborne's conviction. Part 3 of the hearing report, at pages 1589-1636, reprints appellate decisions relating to Judge Claiborne's indictment and conviction. A certified copy of Judge Claiborne's testimony at his first trial is reprinted at pages 1637-1945 of Part 3. Judge Claiborne's pending post-trial motion to vacate the judgment of conviction and the opposition of the United States to that motion are printed at pages 1946-2051 of Part 3 of the hearing report.

Part 4 of the hearing report contains additional Committee exhibits and all exhibits received during the hearings from the House Managers or Judge Claiborne. House Managers Exhibit 27, Judge Claiborne's 1980 tax return, is also reproduced in an addendum to the hearing report. The 1980 tax return had been completed in pencil and the addendum was prepared in an effort to provide for a clearer copy. The original exhibits used at Judge Claiborne's second trial will be available to Members in the Senate Chamber during the Senate's consideration of the Articles of Impeachment.

As stated above, the Committee heard argument on pretrial motions on September 10 and at the first part of its session on September 15, 1986. The Committee granted all or part of three motions filed by the House. In order to permit the Senate to focus on issues which are in dispute between the parties, the Committee granted motions by the House to accept as substantive evidence certain testimony and exhibits from Judge Claiborne's second trial (Part 1 at 297-388) and admissions by Judge Claiborne at his first and second trials (Part 1 at 389-96). These rulings were stated by the Chairman at the conclusion of the Committee's hearing of September 10, 1986 (Part 1 at 110-11). The Committee also granted, to a substantial extent, a motion by the House to exclude, as irrelevant, evidence of alleged judicial and prosecutorial misconduct (Part 1 at 486-502). The ruling on this motion is set forth by the Chairman at the beginning of the hearing of September 17, 1986 (Part 1 at 689-92). In that ruling the Committee decided to permit, and the Committee subsequently did hear, testimony relating to Judge Claiborne's allegation that government agents had influenced the testimony of witnesses.

The Committee refers to the Senate two other motions filed by the House which the Committee lacked jurisdiction to rule on (Part 1 at 108-10). These are motions that the Senate summarily dispose of the Third Article of Impeachment (Part 1 at 145-68) or, failing that, apply collateral estoppel to specific issues alleged in the First and Second Articles of Impeachment (Part 1 at 169-87). The Committee also heard a motion by the House that the Senate convene as a court of impeachment to consider the House motions for summary disposition and the application of collateral estoppel (Part 1 at 188-89). To the extent that this motion requested the Committee to desist from receiving evidence until the Senate ruled on the summary disposition and collateral estoppel motions, the Committee denied the motion (Part 1 at 109-10). The Committee concluded that it should comply first with the Senate's mandate that it report to it an evidentiary record.

The Committee also considered motions filed by Judge Claiborne. Over the course of its proceedings the Committee acted on Judge Claiborne's motion for discovery and provided to him, from records furnished to the Committee by the district court, several memoranda of interviews by government agents of Joseph and Constance Wright (Part 4 at 2242–47, 2250). It concluded that several of Judge Caliborne's other motions were beyond the jurisdiction of the Committee. These were Judge Claiborne's motions to declare unconstitutional Senate Impeachment Rule XI (Part 1 at 240–43), his motion to dismiss the Articles of Impeachment on the ground that they do not state an impeachable offense (Part 1 at 244–57), and his motion that the Senate designate the standard of proof in an impeachment trial as proof beyond a reasonable doubt (Part 1 at 274–75). The Committee refers these motions to the Senate (Part 1 at 112–14).

At the conclusion of its proceedings, on September 23, the Committee considered a suggestion of Senators Heflin, Warner, and Pressler that it engage the services of an expert to inform the Committee about the legal principles and procedures governing prosecutorial decisions customarily followed by the Internal Revenue Service and the Department of Justice. The Committee refers to the Senate the suggestion by Senators Heflin, Warner, and Pressler that the Senate might benefit from the assistance of an expert. The parties have been directed to file briefs with the Senate, no later than October 1, on the legal issues that are presented by the Articles of Impeachment. These briefs should include a discussion of relevant legal principles in the administration of the internal revenue laws.

The Committee received documentary evidence and heard testimony during seven days of hearings, beginning on September 15 and concluding on September 23, 1986. It heard the testimony of three witnesses who were called by the Managers on behalf of the House of Representatives. These witnesses were Joseph Wright, Constance Wright, and William Wilson. The Committee then heard the testimony of sixteen witnesses who were called by Judge Claiborne. These witnesses were Annette Quintana, Kenneth Swanson, Judy Ahlstrom, Jerry Watson, Charlotte Travaglia, Clyde Maxwell, Lawrence Semenza, Timothy Cory, Edward Kane, Leland Lufty, Herman Greenspun, Donald Skelton, Richard Jesinger, Leo Halper, Barry Lieberman, and Judge Claiborne. The Committee called no witnesses of its own but it did recall one of Judge Claiborne's witnesses, Jerry Watson, for further examination by Members of the Committee.

All witnesses were subject to examination and cross-examination by the Managers, or by their counsel, and by counsel for Judge Claiborne. During the first several days of evidentiary hearings the Members of the Committee submitted in writing to the Chairman, in accordance with Senate Impeachment Rule XIX, questions which they wished to propound to the witnesses. Following a unanimous consent agreement of the Senate on September 17, 1986, which permitted the Chairman to modify this procedure, Members of the Committee propounded oral questions to witnesses.

CHARLES MCC. MATHIAS, Jr., *Chairman*
ORRIN G. HATCH
JOHN W. WARNER
WARREN B. RUDMAN
LARRY PRESSLER
MITCH MCCONNELL

PAUL S. SARBANES, *Vice Chairman*
HOWELL HEFLIN
DENNIS DECONCINI
DAVID PRYOR
ALBERT GORE, Jr.
JEFF BINGAMAN

RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

Rule XI

That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subjected to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

○